

Small Business Administration

§ 120.545

(3) If SBA has not specifically approved fees or costs identified in an original or amended liquidation or litigation plan under § 120.540, and SBA determines that such fees or costs are not reasonable, customary or necessary in the locality in question. In such cases, SBA will pay only such fees as it deems are necessary, customary and reasonable in the locality in question.

(c) *Fees for liquidation actions performed by Authorized CDC Liquidators.* Subject to paragraph (d) of this section, SBA will compensate Authorized CDC Liquidators for their liquidation actions on 504 loans, whether such actions are performed by the CDC or the CDC's contractor retained in accordance with § 120.975(a)(2) or (b)(2)(ii). The compensation fee will be a percentage (to be published in the FEDERAL REGISTER from time to time, but not to exceed 10%) of the net recovery proceeds realized from the sale of collateral or other liquidation actions on an individual loan, up to a fee of \$25,000 for such loan, and a lower percentage (also to be published in the FEDERAL REGISTER from time to time, but not to exceed 5%) of the realized net recovery proceeds above such amounts. The compensation fee limits set forth in this paragraph (c) do not include reasonable, customary and necessary administrative costs related to liquidation activities on such loan that are incurred in accordance with the liquidation plan, or amendments thereto, approved by SBA pursuant to § 120.540(b). The Authorized CDC Liquidator may compensate its contractor up to the amount it receives from SBA. All requests for compensation fees must be received by SBA within nine months from the date of SBA's purchase of the defaulted debenture. Fee requests not received within such timeframe will be automatically rejected.

(d) *Appeals—liquidation costs.* A Lender or Authorized CDC Liquidator that disagrees with a decision by an SBA office to decline to reimburse all, or a portion, of the fees and/or costs incurred in conducting liquidation may appeal this decision in writing to the D/FA within 30 days of the decision. The decision of the D/FA or designee will be made in consultation with the Associate General Counsel for Litiga-

tion, and will be the final Agency decision.

(e) *Appeals—litigation costs.* A Lender or Authorized CDC Liquidator that disagrees with a decision by SBA to decline to reimburse all, or a portion, of the legal fees and/or costs incurred in conducting debt collection litigation may appeal this decision in writing to the Associate General Counsel for Litigation within 30 days of the decision. The decision of the Associate General Counsel for Litigation will be made in consultation with the D/FA, and will be the final Agency decision.

[72 FR 18362, Apr. 12, 2007, as amended at 74 FR 45753, Sept. 4, 2009]

§ 120.545 What are SBA's policies concerning the liquidation of collateral and the sale of business loans and physical disaster assistance loans, physical disaster business loans and economic injury disaster loans?

(a) *Liquidation policy.* SBA or the Lender may liquidate collateral securing a loan if the loan is in default or there is no reasonable prospect that the loan can be repaid within a reasonable period.

(b) *Sale and conversion of loans.* Without the consent of the Borrower, SBA may:

(1) Sell a direct loan;

(2) Convert a guaranteed or immediate participation loan to a direct loan; or

(3) Convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender.

(4) Sell direct and purchased 7(a) and 501, 502, 503 and 504 loans and physical disaster home loans, physical disaster business loans and economic injury disaster loans in asset sales. SBA will offer these loans for sale to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale.

(c) *Disposal of collateral and assets acquired through foreclosure or conveyance.* SBA or the Lender may sell real and personal property (including contracts and claims) pledged to secure a loan that is in default in accordance with the provisions of the related security

instrument (*see* § 120.550 for Homestead Protection for Farmers).

(1) *Competitive bids or negotiated sales.* Generally, SBA will offer loan collateral and acquired assets for public sale through competitive bids at auctions or sealed bid sales. The Lender may use negotiated sales if consistent with its usual practice for similar non-SBA assets.

(2) *Lease of acquired property.* Normally, neither SBA nor a Lender will rent or lease acquired property or grant options to purchase. SBA and the Lender will consider proposals for a lease if it appears a property cannot be sold advantageously and the lease may be terminated on reasonable notice upon receipt of a favorable purchase offer.

(d) *Recoveries and security interests shared.* SBA and the Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, including proceeds from asset sales, all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lienholders), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

(e) *Guarantors.* Guarantors of financial assistance have no rights of contribution against SBA on an SBA guaranteed or direct loan. SBA is not deemed to be a co-guarantor with any other guarantors.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 44110, Aug. 13, 1999; 65 FR 17133, Mar. 31, 2000; 68 FR 51680, Aug. 28, 2003. Redesignated and amended at 72 FR 18362, Apr. 12, 2007]

§ 120.546 Loan asset sales.

(a) *General.* Loan asset sales are governed by § 120.545(b)(4) and by this section.

(b) 7(a) *loans*—(1) *For loans approved on or after May 14, 2007.* The Lender will be deemed to have consented to SBA's sale of the loan (guaranteed and unguaranteed portions) in an asset sale conducted or overseen by SBA upon the occurrence any of the following:

(i) SBA's purchase of the guaranteed portion of the loan from the Registered Holder for a loan where the guaranteed

portion has been sold in the Secondary Market pursuant to subpart F of this part and after default, the Lender has not exercised its option to purchase such guaranteed portion; or

(ii) SBA's purchase of the guaranteed portion from the Lender, provided however, that if SBA purchased the guaranteed portion pursuant to § 120.520(a)(1) prior to the Lender's completion of liquidation for the loan, then SBA will not sell such loan in an asset sale until nine months from the date of SBA's purchase; or

(iii) SBA receives written consent from the Lender.

(2) For loans identified in paragraph (b)(1)(i) of this section, the Lender may request that SBA withhold the loan from an asset sale if the Lender submits a written request to SBA within 15 business days of SBA's purchase of the guaranteed portion of the loan from the Registered Holder and if such request addresses the issues described in this subparagraph. The Lender's written request must advise SBA of the status of the loan, the Lender's plans for workout and/or liquidation, including and pending sale of loan collateral or foreclosure proceedings arranged prior to SBA's purchase that already are underway, and the Lender's estimated schedule for restructuring the loan or liquidating the collateral. SBA will consider the Lender's request and, based on the circumstances, SBA in its sole discretion may elect to defer including the loan in an asset sale in order to provide the Lender additional time to complete the planned restructuring and/or liquidation actions.

(3) *For loans approved before May 14, 2007.* SBA must obtain written consent from the Lender for the sale of such loans in an asset sale.

(4) After SBA has purchased the guaranteed portion of a loan from the Registered Holder or from the Lender, the Lender must continue to perform all necessary servicing and liquidation actions for the loan up to the point the loan is transferred to the purchaser in an asset sale. The Lender also must cooperate and take all necessary actions to effectuate both the asset sale and the transfer of the loan to the purchaser in the asset sale.